IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1989 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRATIMABEN W/O SURESHKUMAR AMBALAL MAKWANA

Versus

AMBALAL DANABHAI MAKWANA

Appearance:

1. First Appeal No. 1989 of 2003

MR PT JASANI for Petitioner No. 1-3

MR JAYANT P BHATT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 26/02/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE KSHITIJ R.VYAS)

1. The appellant no.1 (original plaintiff no.1) filed a suit being Family Suit No. 621 of 2001 in the Family Court at Ahmedabad for getting maintenance from the respondent (original defendant) for herself as well as for her daughter and a son, the appellants no. 2 and 3 herein, to the extent of Rs. 5000/- per month under sections 19 and 22 of the Hindu Adoption and Maintenance Act, 1956 (in short, 'the Act'). The Family Court, after appreciating the evidence on record, by its judgment and order dated 11.3.2002, dismissed the suit. Hence the present appeal.

2. The facts giving rise to the suit are as under:

The marriage between the plaintiff no.1 and one Sureshkumar Ambalal, son of the defendant was solemnised on 6.5.1991 according to Hindu rites and rituals. After the marriage, they stayed in the joint family of Sureshkumar when one daughter and one son were born out of the said wedlock. The husband of plaintiff no.1 Sureshkumar died on 26.5.1998 in an accident. As per the say of plaintiff no.1, she continued to stay with her in-laws in joint family. However, afterwards she and her children were driven out from the house of the defendant and, therefore, she was compelled to take shelter of her brother. As per the say of the plaintiffs, the defendant was serving as Deputy Commissioner in Income-tax Department of Gujarat Circle, Ahmedabad and was an Officer of high rank and, therefore, his economic condition is good. It is also averred that the plaintiff no.1 and her husband were doing business on wholesale and commission basis in the name of "Suresh & Co." at Shop No. 458, Sugarwala Market, Sakar Bazar, Ahmedabad and the income which was earned by her deceased husband out of his business was kept by the defendant and the defendant was also maintaining the accounts of the business and the defendant had suppressed all this relevant information from her. It is further averred that the defendant is the owner of four immoveable properties worth Rs. 57 lacs and is also getting income by way of rent. As per the say of plaintiff no.1, the defendant is getting pension of Rs.10,000/- and is also receiving other income such as dividend, interest, rent etc. to the tune of Rs. 30,000/- per month and, thus, his total income is Rs.40,000/- per month. The plaintiff no.1 is residing with her brother along with her children and she has no other source of income to maintain herself and her two children and she has to incur expenses of Rs. 5000/- per month to maintain herself and her children.

According to the plaintiff, the defendant is legally and morally bound to maintain her and her children. As the defendant has not made any arrangement for their maintenance and support, she filed a suit for maintenance of herself as also of her children claiming Rs. 5000/- per month.

3. The defendant appeared and filed his written statement at Ex.5. He denied that he had received and administered income of deceased Sureshkumar. It is the contention of the defendant that he had purchased properties from his own income and the plaintiff and her deceased husband had no right, title or interest in the said properties. He has also denied that he had any information that the plaintiff's husband was doing business on the wholesale and commission basis and that he had received income from him. According to him, he had never driven out the plaintiff no.1 and her children, but they themselves had left his house at the instigation of brother of plaintiff no.1. According to the defendant, the plaintiff and her deceased husband had no right, title or interest on his property. According to the defendant, he is the owner of only two properties, one building is situated in Manohar Nagar, Gomatipur, Ahmedabad admeasuring about 58 sq.yds and the other plot bearing no. 524/1 is situated in Abhinav Society, Sector 23, Gandhinagar which is admeasuring 200 sq.yds. He has contended that he had purchased the said two properties from his own income and by taking loan and when he had purchased the said properties, his deceased son Sureshkumar was minor and at that time, he had no source of income. According to the defendant, he is not the owner of other two properties as alleged in the plaint. According to the defendant, he is getting pension of Rs. 6615/- p.m. and there is no other income such as interest, dividend, rent etc.

4. On appreciating the evidence on record, the Family Court held that the plaintiffs have failed to prove that the husband of plaintiff no.1 had got undivided share in the properties as shown in plaint para 5 and that the said properties were of HUF. In view of this, the Family Court held that the plaintiffs were not entitled to maintenance from the respondent.

5. We have heard Mr. PT Jasani, learned Advocate for the appellants and Mr.JP Bhatt, learned Advocate for the respondent.

6. Mr. Jasani, learned Advocate has tried to assail the findings recorded by the trial court, namely that the

properties mentioned in the plaint are self acquired properties of the defendant and, therefore, the appellants have no right, title or interest therein and that the respondent father-in-law is under moral obligation to maintain the appellants out of his properties. To substantiate the said submissions, he has placed reliance on the decision rendered by the Full Bench of Andhra Pradesh High Court in the case of TA Lakshmi Narasamba Vs. T.Sundaramma and ors.,AIR 1981 AP 88. He has also placed reliance on the decisions in the case of Mst.Rupa Gauntiani and anr. Vs. Mst.Sriyabati, AIR 1955 Orissa 28 and Jal Kaur w/o Sadhu Singh Vs. Pala Singh, AIR 1961 Punjab 391.

We have gone through the said decisions.

7. As the learned advocate for the appellants has conceded that the properties in possession of the defendant are not coparcenary properties, section 19 of the Act will have no application. Therefore, we have to consider whether the appellants are entitled to get maintenance from the defendant under the provisions of section 22 of the Act or not. Section 21 of the Act defines 'dependents'. As per the provisions of section 21 of the Act, no doubt, the appellants are the dependents of the deceased. Section 22 of the Act deals with maintenance of dependents which reads as under:

"22. Maintenance of dependents: (1) Subject to the provisions of subsection (2), the heirs of a deceased Hindu are bound to maintain the dependents of the deceased out of the estate inherited by them from the deceased.

(2): Where a dependant has not obtained, by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependant shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate.

(3): The liability of each of the persons who take the estate shall be in proportion to the value of the share or part of the estate taken by him or her.

(4): Notwithstanding anything contained in subsection (2) or subsection), no person who is himself or herself a dependant shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part, the value of

which is, or would, if the liability to contribute were enforced, become less than what would be awarded to him or her by way of maintenance under this Act."

On true reading of section 22, it is clear that the liability to maintain dependents of the deceased Hindu lies on the heirs of the deceased Hindu who have inherited property from the deceased. Therefore, it implies that a person from whom maintenance is claimed should be the heir of the deceased who has inherited properties from the deceased. From the evidence on record, it clearly transpires that the respondent has not inherited any property from his deceased son. On the contrary, from the documentary evidence on record, it is clearly established that the properties which are shown at serial no. 1 and 2 in the plaint were purchased by the defendant from his own individual income when his deceased son Sureshkumar was minor. The trial court has recorded a finding that from the documentary evidence produced on record, it is clear that the said two properties were purchased in the year 1969 and 1975 respectively when deceased Sureshkumar was minor aged 3 years. Therefore,in view of the documentary evidence on record, we are convinced beyond any manner of doubt that the respondent had purchased the properties in question from his own income and not from the income of his deceased son Sureshkumar. In other words, the respondent has not inherited properties from his deceased son. In view of this, in our opinion, section 22 of the Act will have no application whatsoever. Therefore, in our opinion, the trial court was justified in rejecting the suit. We are conscious of the fact that the appellant no.1 being a widow has filed the suit for maintenance for herself as well as for her two minor children. However, under the law, as the respondent who is the father-in-law is not liable to pay maintenance since he has not inherited properties from his deceased son, the authorities cited by the learned advocate for the appellants will have no application to the facts and circumstances of the present case. On going through the authorities cited before us, it is clear that those cases arose prior to 1956 and, therefore, it was observed that the father-in-law was under moral obligation to pay maintenance to the widow daughter-in-law. The case on hand being governed by the Act of 1956, the situation is quite different. In this view of the matter, we see no merit in this appeal.

8. Before parting, we would like to observe about

the attempts made by the Court to resolve the dispute between the parties. Learned advocate Mr. Bhatt appearing for the respondent, before hearing of the matter, after consulting the respondent who is present in the Court, has stated that the respondent shall bear the entire school and college education expenses of appellants no. 2 and 3 during his life time which include fees as well as costs of books. He has fairly stated that irrespective of the result of the appeal, the respondent will be under moral obligation to bear the school/ college education expenses of appellants no. 2 and 3.

We appreciate the said gesture and record the same. As agreed by Mr.Bhatt, while dismissing the appeal, we direct the respondent to bear the school/ college education expenses of appellants no. 2 and 3 by providing fees and costs of books. It is directed that in the beginning of the academic term of appellants no. 2 and 3, the respondent shall directly pay the fees and after getting syllabus from the school/ college, shall provide books for appellants no. 2 and 3.

Subject to the aforesaid directions, this appeal stands dismissed. No order as to costs.

(Kshitij R.Vyas,J.)

(M.C.Patel,J.)

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